

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NO : 29587 of 1997

Between:

V. Thirupathaiah, s/o. Venkata Narsaiah, presently working
As Junior Accounts Officer, Electricity Revenue Office, APSEB,
Jangaon, Warangal District.

..... PETITIONER

AND

1. The Superintending Engineer (Operation),
A.P.State Electricity Board, Warangal.
2. The Chief Engineer, Metropolitan Zone, APSEB, Warangal.
3. The Member Secretary, APSEB, Vidyuth Soudha, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of mandamus directing the respondents to promote the petitioner as Junior Accounts Officer on par with his juniors by taking into account the seniority of the petitioner in the category of UDC as he cannot be denied promotion basing on certain uncommunicated baseless adverse remarks and further direct the respondents to consider the claim of

the petitioner for promotion to the post of Assistant Accounts Officer by restoring his seniority in the category of Junior Accounts Officer. The petitioner further prays that the Hon'ble Court may be pleased to declare the action of the respondents in not considering his claim for promotion in his turn basing on uncommunicated baseless adverse remarks and denying him seniority as illegal, arbitrary, vindictive apart from violation of Articles 14, 16 and 21 of the Constitution of India.

Counsel for the Petitioner : MR.K.VASUDEVA REDDY

Counsel for the Respondents : Mr. S. Ravindranath, Standing Counsel for APSEB

The Court made the following :

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ORDER :

This writ petition is filed by the petitioner aggrieved by the action of the respondents in denying promotion to him along with his juniors who were promoted in the month of March, 1990, while the petitioner was promoted later in the month of October, 1990.

According to the petitioner, he possessed the educational qualification of Graduation and other technical qualifications required to be appointed as Typist. He was initially appointed as a Typist in the year 1969 and later he was promoted as Upper Division Clerk (UDC) in the year 1982. Ever since the petitioner was discharging his duties as U.D.C. till 1990. In the month of January, 1990 the respondents have promoted some of the U.D.Cs. including the juniors to the petitioner by proceedings dated 14-3-1990 to the post of Junior Accounts Officer, which is the next higher category for promotion. As the petitioner was not promoted along with his juniors, he made a representation on 17-3-1990. But, a day before the said representation, the petitioner received a communication from the respondents informing that there were certain adverse remarks entered in his personal records for the year 1988. According to the petitioner, till the juniors to the petitioner were promoted to the next category i.e., Junior Accounts Officer, no adverse remarks were ever received by the petitioner. Though no orders were passed disposing of the representation of the petitioner, the

petitioner was promoted as Junior Accounts Officer on 9-10-1990 and the petitioner joined duty on 10-10-1990. Thereafter, the seniority list of Junior Accounts Officers was published on 1-6-1993 wherein the petitioner was shown as junior to the Junior Accounts Officers, who were juniors to him in the lower cadre of U.D.C. and promoted as Junior Accounts Officers by proceedings dated 14-3-1990. Therefore, the petitioner again made representations to the respondents seeking restoration of his seniority in the cadre of Junior Accounts Officer to the same level as it was in the cadre of U.D.C. As no action has been taken by the respondents, the petitioner has come up with the present writ petition.

Learned counsel for the petitioner contended that if any adverse remarks, disentitling the petitioner for promotion, were entered in the personal records of the petitioner, the respondents ought to have communicated the same to the petitioner so as to know his position. Therefore, it is contended that the adverse remarks, which were communicated to the petitioner after his juniors were promoted, are intended only to explain away the denial of promotion to the petitioner. The learned counsel also contended that the petitioner was promoted to the post of Junior Accounts Officer in October, 1990. If really the adverse remarks, entered in the personal records of the petitioner in the year 1980, are the reasons for denial of promotion to the petitioner, the petitioner ought not to have been promoted in October, 1990. Therefore, it is contended by the learned counsel that the action of the respondents is illegal apart from discriminatory, therefore, sought for restoration of the seniority of the petitioner.

A counter affidavit has been filed on behalf of the respondents disputing and denying the allegations made in the writ affidavit. In the counter, though it is admitted that the petitioner was not communicated any adverse remarks, but stated that the petitioner was issued Memos by the Assistant Accounts Officer under whose control he was working. The petitioner was issued Memos in February, April and June, 1988 and he was called upon to explain. Through letter dated 24-3-1990, the petitioner himself has agreed that he was in receipt of the said Memos and of course, he has furnished the explanation. But, however, in the counter it is not stated the reasons or the grounds for which the said Memos were served and what was the explanation of the petitioner. In the counter it is also stated that after representation of the petitioner, the respondents have obtained a special report from the controlling

officer and only after receipt of the report stating that the petitioner has improved and getting a clean report, the petitioner was promoted in October, 1990. It is stated that the provisional seniority list was communicated on 1-6-1996 and the commencement of the probation of the petitioner was ordered as per Provision 26 of A.P.S.E.B. Service Regulations, Part-II. The learned standing counsel for the respondent Board contended that as there were adverse entries in the Service Register of the petitioner, he was not promoted, but subsequently he was promoted only on consideration of the report of the controlling officer. Therefore, the petitioner is not entitled for any relief.

Heard both sides and considered the material on record.

The issue in dispute is whether there are justifying grounds in denying the promotion to the petitioner along with his juniors and whether the petitioner is not entitled for restoration of his seniority in the cadre of Junior Accounts Officers. It is not in dispute that from 1982 onwards, till date the petitioner has been working as U.D.C. On 14-3-1990 certain of the U.D.Cs. were promoted as Junior Accounts Officers, including the U.D.Cs., who are juniors to the petitioner, but the petitioner was not promoted. Though the said order of promotion was passed on 14-3-1990, the petitioner received the communication about the entering of adverse remarks in the personal register of the petitioner in 1988 only on 16-3-1990 i.e., two days after the promotion to the juniors were effected. Therefore, the petitioner made a representation on 17-3-1990, stating that he was never communicated any adverse remarks and how he would be denied the promotion when his juniors were promoted. Later, as admitted by the respondents in the counter, a special report was obtained from the controlling officer concerned and basing on the said report, the petitioner was promoted by proceedings dated 9-10-1990 and the petitioner joined on 10-10-1990 as Junior Accounts Officer. But in the seniority list published in the cadre of Junior Accounts Officers, the petitioner was shown as junior to the Junior Accounts Officers, who were promoted on 14-3-1990, perhaps taking the date of promotion. But the grievance of the petitioner is that some of his juniors in the cadre of U.D.C. are being shown as seniors in the cadre of Junior Accounts Officers. Therefore, the present

writ petition seeking the relief of promotion to the post of Junior Accounts Officer on par with his juniors and restoration of seniority.

Though the respondents contended that the petitioner was denied the promotion for the reason of adverse entries made in the personal register of the petitioner in the year 1988, if the said adverse entries are to the effect that they would disentitle the petitioner for promotion, they ought to have been communicated to the petitioner immediately when they were entered in the personal register. But the same were not communicated to the petitioner till his juniors were promoted in the year 1990. Obviously, the action on the part of the respondents clearly shows that such communication was given only to deny the promotion or to explain the denial of promotion to the petitioner. But immediately after the representation of the petitioner, the respondents obtained a report, which was favourable to the petitioner, and basing on that the petitioner was promoted in October, 1990. By that date no fresh entries were made in the Annual Appraisal Reports (A.A.Rs.) of the petitioner, but the petitioner was promoted basing on the same A.A.Rs., which were considered by the date of promoting his juniors i.e., on 14-3-1990. If the petitioner was found suitable and eligible for promotion and accordingly promoted in October, 1990 basing on the very same entries in the A.A.Rs. of the petitioner, his seniority ought to have been restored and the denial of such seniority in the cadre of Junior Accounts Officers is clearly illegal and without jurisdiction. Further, even non-communication of the alleged adverse entries is also fatal to the claim of the respondents that the petitioner's case for promotion was denied on account of the adverse entries. Therefore, the petitioner is entitled for notional seniority on par with his juniors so as to be considered for further promotion along with the Junior Accounts Officers, who were juniors to the petitioner in the cadre of U.D.Cs.

The writ petition is accordingly allowed to the extent indicated above. It is made clear that the petitioner is not entitled for any monetary benefit on account of notional seniority, though he is entitled for all other consequential benefits on the basis of

notional seniority. No costs.

(S.ANANDA REDDY,J.)

4-11-2004.

Msr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Fourth Day of November, Two Thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Superintending Engineer (Operation),
A.P.State Electricity Board, Warangal.
2. The Chief Engineer, Metropolitan Zone, APSEB, Warangal.
3. The Member Secretary, APSEB, Vidyuth Soudha, Hyderabad.
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(Msr)